Main Role of Judicial Actors at the National and EU Levels

WORKSHOP PREPARATION

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The workshop case-study is based on the Thin Cap Group Litigation in the UK.


- The matter was heard in the English High Court by Mr Justice Henderson. His judgment was delivered on the 17 Nov 2009. Note: the taxpayer won. – See http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Ch/2009/2908.html&query=Test+and+Claimants+and+in+and+the+and+Thin+and+Cap+and+Group+and+Litigation&method=boolean;

- This judgment was appealed to the Court of Appeal where the taxpayer lost on a 2-1 majority judgment delivered on the 18 Feb 2011. See http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2011/127.html&query=thin+and+cap+and+group+and+litigation&method=boolean

ASSIGNMENT

(1) Study the three judgments independently of your colleagues in advance of the workshop. Do not share your findings or discuss with colleagues prior to the workshop.

(2) Make a list of the related case law from the ECJ and make notes on the relevant judgments (note - there have been a number of significant judgments given by the Court in this area since 2011 - for instance, see Itelcar1 and SCA2)/

(3) Determine whether you agree with the majority of the Court of Appeal or whether you prefer the dissenting judgment of Lady Justice Arden / Mr Justice Henderson or do you differ from both of these camps?

(4) Read what the academics have said about the judgments in question. Make a list of the articles that you have managed to find and read in the course of researching for this project.

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(5) Draft your skeleton judgment dealing with each of the arguments contained in the Court of Appeal judgment. Feel free to use jurisprudence not discussed in the Court of Appeal judgments.

(6) Be prepared to discuss these (and related) issues in the workshop.

(7) Conclude whether the taxpayer should have won or not. Be prepared to argue your decision with the group.

(8) Conclude whether the matter was *acte clair* and that there was no need to make a further reference to the ECJ. Be prepared to argue your decision with the group - re-read the CILFIT judgment.3

(9) Conclude whether the English Courts fulfilled their obligations under the TFEU and the TEU. What case law have you found on this issue?

(10) Make a note about what you have learned from this training experience and be ready to discuss/explain this to the group.

(11) Write down a clear statement of the law in the area of thin capitalization rules in an EU/EEA environment.

(12) What best practices can you draw from this case study?

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